

June 17, 1999

Mr. Jim Canaday
State Water Resources
Control Board
Division of Water Rights
P.O. Box 2000
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ENTRIX, INC.
(FRONT DESK)

Mr. Jim McNamara
U.S. Bureau of Reclamation
South-Central California Office
2666 North Grove Industrial Drive, Suite 106
Fresno, CA 93727-1551

Re: Notice of Preparation of Draft Environmental Impact Report for Review of the U.S.
Bureau of Reclamation's Cachuma Project Water Rights Permits; Environmental
Defense Center Scoping Comments

Dear Sirs:

The Environmental Defense Center (EDC) is a non-profit public interest law firm working to protect public trust resources in Santa Barbara, Ventura and San Luis Obispo Counties. Our organization works extensively on Santa Ynez River issues, such as water rights and Endangered Species Act issues. We are submitting these scoping comments to the Notice of Preparation of Draft Environmental Impact Report for the "Review of the U.S. Bureau of Reclamation Water Rights Permits (Applications 11331 and 11332), to Determine Whether Any Modifications in Permit Terms or Conditions are Necessary To Protect Public Trust Values and Downstream Water Rights on the Santa Ynez River Below Bradbury Dam."

Project Description

As a threshold matter, it is difficult to provide scoping comments at this time because the project description relies on actions to be taken pursuant to a National Marine Fisheries Service (NMFS) Biological Opinion (BO) that is not currently in existence. Because the public and responsible agencies do not know what NMFS will recommend, it is impossible to determine what the project will be. Therefore, we must request that preparation of the Draft EIR not proceed until the project is fully defined based on the NMFS BO.

The project as described is too narrowly drawn. Not only does the project consist of the "development of revised release requirements and other conditions," but the implementation of such conditions as well. The development and implementation of these measures cannot be reviewed separately in a piecemeal fashion, and must therefore be analyzed for environmental impacts in a single CEQA document.



The project description includes the "other reports called for by Order 94-5." These reports appear to include, among others, (1) a final contract renewal EIS/EIR, (2) the reports or data compilations resulting from the MOU's, including any extensions thereof, (3) a report on the riparian vegetation monitoring program in and along the margins of the Santa Ynez River below Bradbury Dam required by amended condition 6(m) of the subject permits, (4) a study report, or compilation of existing materials, which clearly describes the impacts, or lack thereof, of the Cachuma Project on downstream diverters as compared to conditions which would have existed in the absence of the Cachuma Project. The project description should describe these reports in detail to ensure that the contemplated EIR contains a discussion and analysis of this information.

The project description must include specific defined activities in addition to increased water releases that will be undertaken to protect public trust resources. As presently drafted, much of the restoration work that the Santa Ynez River Consensus Committee proposes to undertake would not be considered part of the project. Without some degree of restoration work, increased releases will be of little benefit to the public trust resources. Therefore, the project description in the NOP must specify what other actions are part of the project, even if this means waiting for the NMFS BO to become available.

Furthermore, the proposed project description does not comply with CEQA guidelines, which require that project descriptions contain "a statement of objectives sought by the proposed project." CEQA Guidelines § 15124. As noted in the Guidelines, a clearly written statement of objectives will help develop a reasonable range of alternatives. The project description currently has no stated objectives and thus the range of alternatives is difficult to evaluate. In light of the listing of southern ESU of Steelhead trout as an endangered species, recovery of the species should be one of the identified objectives of the project and the draft EIR should include a discussion of how to measure success against this objective.

Proposed Alternatives

The first described alternative (the No Project Alternative) represents the conditions at the time of the public trust complaint filed by California Sportfishing Protection Alliance (CALSPA). As such, it does not accurately describe the baseline conditions, which, pursuant to CEQA Guidelines § 15125, are the conditions in existence at the time the Notice of Preparation was published, that is, as of May 14, 1999. As of that date and continuing to present, pursuant to the 1993 Memorandum of Understanding for Cooperation in Research and Fish Maintenance on the Santa Ynez River (MOU) and subsequent MOUs, there exists a Fish Reserve Account that provides 2000 acre-feet of water per year that is dedicated to fish studies and maintenance. This is part of the baseline conditions. Therefore, the No Project Alternative should include the 2000 acre-feet per year that have been available for fish since 1993. The proposed No Project Alternative actually represents less water for public trust resources than is currently available under baseline conditions.

Alternatives 2 and 3 refer to the NMFS BO. However, as described above, the BO is not yet out and therefore is an undefined item containing undefined measures. These alternatives are thus not well defined, and the NOP does not adequately explain what these alternatives will include. Furthermore, since it is very possible that the BO will have the same or very similar provisions to those in the Fish Management Plan, it is unclear, without having the BO available, how those alternatives will differ, if at all. Thus the difference between alternatives 2 and 3 may not be substantial, and the EIR may not include a range of alternatives. Therefore, it is important for the BO to be available before the NOP is issued and the Initial Study process is initiated so that a reasonable range of feasible alternatives are analyzed.

As discussed above, the baseline conditions assumed in the description of the No Project Alternative are incorrect because they do not include the 2000 acre-feet per year that is part of the existing MOU. The actual baseline conditions include this provision of the MOU as part of the physical conditions within the river at the time of initiation of environmental review. Impacts associated with the proposed project and each alternative in the Draft EIR must be based on the proper baseline, and not on the physical conditions in and around the river on November 13, 1987, 12 years before the EIR is prepared.

None of the proposed alternatives looks at more rigorous water conservation efforts as a means to obtain more water for public trust resources. Some sort of conservation plan should be included in the proposed alternatives, as a stand alone alternative and as a component of the other alternatives. This is an obvious, feasible measure that could be undertaken to fulfill the project objectives, which, while not stated in any measurable way, must include the enhancement of public trust resources. Water conservation is a feasible alternative that reduces the significant environmental impacts that this project will have (see below), and should be included within a reasonable range of alternatives in the DEIR.

In a report dated March 11, 1998, and entitled "Santa Ynez River Fisheries Management Alternatives," the Santa Ynez River Technical Advisory Committee identified 46 possible management alternatives to improve the public trust resources and steelhead habitat and survival in the lower Santa Ynez River. At least some of the more viable of these alternatives, including those that are not being recommended in the draft Lower Santa Ynez River Fish Management Plan should be addressed in the draft EIR in addition to the management alternatives ultimately selected for implementation.

Some of the options in Appendix A of the Santa Ynez River Fish Management Plan which were not carried further for additional analysis merit closer attention in the EIR. For instance, Option 2 was discarded because it had "uncertain benefits for fish habitat." For this reason, it should be analyzed in more detail in the EIR to see what those benefits may be. Options 6 and 25 were discounted because there is reportedly not water available for purchase. The DEIR should describe any efforts undertaken to date to purchase water, or efforts that would be required to attempt to purchase water. These options would have significant benefits for steelhead, and it may be that water is available if the price offered is great enough. Failure to

analyze a valid alternative from an EIR merely because the resources (in this case the water) is not owned by the project sponsor, is not an adequate reason and does not comply with CEQA. In *Citizens for Goleta Valley v. Santa Barbara County Board of Supervisors* ((2d Dist. 1988) 197 Cal.App. 3d 1167 [243 Cal.Rptr. 410]) the court held that alternative project sites cannot be discounted from consideration in an EIR solely because the project sponsor does not own the site. Similarly, alternatives involving the purchase of water for fish enhancement should not be excluded from the EIR simply because the project proponent does not own the water. Please provide more detail regarding why these options were not pursued further, and an explanation of why no water is reportedly available for purchase. Could it be that water would be available if the price per AF was higher?

Options 12 and 13 should also be analyzed in the EIR, although they are not proposed in the Fish Management Plan because of a reported lack of landowner interest. Again, in terms of a CEQA perspective, alternatives cannot be dropped merely because the project sponsor does not own the land (*Citizens for Goleta Valley v. Santa Barbara County Board of Supervisors*). Based on this, we feel it is appropriate to analyze these options in more detail in the environmental review document that is forthcoming. Lastly, Option 22 seems to warrant additional investigation. The EDC is aware of no institutional obstacles to this option, and believes that the US Forest Service would likely be supportive of such an approach. Therefore, a detailed analysis in the EIR should be included.

Probable Environmental Impacts

It appears that the impact analysis proposes to use an incorrect baseline. As noted above, under the CEQA Guidelines, the baseline is existing physical and biological conditions as of the date the Notice of Preparation is sent out. Thus, the baseline includes the 2,000 acre-feet that currently is set aside in the MOU to maintain fish resources, and any aspect of the project that contemplates less than the currently available 2,000 AFY of water should be evaluated for adverse impacts to steelhead recovery and other public trust resources.

The proposed changes in the amount and/or timing of water released may have the result of benefiting non-native predator and competitor species more than it will benefit steelhead. Therefore, the draft EIR should evaluate whether the alternative water release regimes described therein would have any adverse effects on steelhead and other native fish and amphibians by increasing the numbers of predators and/or competitors. Increased releases may benefit cattail, sunfish bass and bullfrogs more than steelhead, red-legged frogs, western pond turtles, two-striped garter snakes and other native aquatic species, and the net effect may be adverse to steelhead and other native species, whether or not the gross effect is beneficial or detrimental.

The Santa Ynez River Consensus Committee's management plan contemplates obtaining extra water for release for fish by surcharging the dam. To accomplish this, flashboards would be installed to enable a 1.8 foot surcharge. Apparently, a 3-foot surcharge is also contemplated. Both of these levels of surcharge have the potential for impacting terrestrial vegetation around

Cachuma Reservoir's perimeter. Increased saturation of the bank area around the reservoir's lengthy perimeter would detrimentally affect numerous oak trees and other native vegetation species that are not tolerant of wet soil conditions. The proposed project and alternatives, then, would result in the potential killing of a large number of oak trees and other species such as those found in chaparral environments over both the short and long-term. These impacts should be evaluated, and effective mitigation measures, such as habitat restoration and native tree planting must be included to offset these potentially very significant impacts.

Furthermore, the surcharge will cause the reservoir to spill less frequently, for shorter periods of time, and with less magnitude. The draft EIR will need to include hydrological information and a detailed analysis regarding how less frequent spills, reduced spill duration, and reduced spill magnitude will affect the public trust resources below the dam, including upstream and downstream steelhead migration, sand bar breaching, and native fish rearing and spawning.

A variation on the surcharging option should also be evaluated in the EIR in order to minimize potential impacts of the option while also preserving the possible benefits from surcharging. Specifically, the DEIR should analyze an option that would allow controlled spills to occur when the reservoir reaches 750' in elevation, but at the same time would also allow for surcharging to occur. As an example of how this alternative would work, if 5,000 cfs were flowing into the reservoir and the surface water elevation was 750', then 2,500 cfs could be released downstream in attempt to provide important "natural" post-storm flow conditions below the dam and concurrently, the remaining inflow could be surcharged to store water for subsequent releases for steelhead and the river throughout the remainder of the year. This option may provide the best combination of benefits for steelhead; it would provide ample water to cue and facilitate upstream migration in the mainstem and would also surcharge the reservoir with enough water to provide up to 5,500 AF for later release.

The possible relocation of the lower part of Hilton Creek may reduce the amount of water flowing into the section of river between the Long Pool and the existing confluence. This section of the river is important for steelhead, but the proposed action may reduce habitat conditions for steelhead in this reach. This impact needs to be analyzed from quantified hydrological and biological perspective. Additionally, how will the relocation of the mouth of Hilton Creek impact the movement of fish from the Stilling Basin into Hilton Creek or visa versa? Since the mouth would be located further downstream, the EIR should discuss and offer mitigation for (if necessary) any impact to steelhead movement between the Stilling Basin and Hilton Creek.

Mitigation Measures

There is no discussion of possible mitigation measures in the Notice of Preparation. Nonetheless, we would like to express our thoughts regarding some mitigation measures that should be addressed in the draft EIR.

Mitigation should be undertaken to remedy any actions taken that will benefit non-native predators and competitors at the expense of public trust resources such as steelhead and state and federal protected species. Examples of such mitigation would be to develop and implement programs to eradicate bullfrogs, bass and catfish. Such measures should not be tied to fish rescue operations as they are in the Fish Management Plan, but should be independent of rescues and stand alone as mitigation actions for the impact of benefiting predators and competitors at the expense of steelhead.

Mitigation measures should also be undertaken to replace any vegetation that is lost, over the short and long-term, as a result of the contemplated 1.8-foot and possible 3-foot surcharge.

As noted above, a number of management alternatives have been considered, not all of which are intended to be implemented. Some of these alternatives should be considered as measures taken to mitigate for any adverse impacts of the project. For example, any reduction during periods of low reservoir storage (less than 100,000 AF) of the 2,000 AFY now available for fish is an adverse impact using the existing baseline conditions and must be mitigated to ensure that the reduction does not bring the species closer to extinction or cause other impacts to water and biological resources.

Policy Considerations

Section 5937 of the Fish and Game Code requires that fish be maintained in good condition below the dam. While some may disagree about what "good condition" might mean, none can argue that a set of conditions that resulted in a species of fish becoming endangered fulfills the requirements of § 5937. Thus, any discussion of alternatives and the proposed project must evaluate them in light of the requirements of § 5937. For instance, any alternative, such as merely adding 2,000 acre-feet to a fish reserve account in wet years, should be evaluated in light of the fact that during the six years the use of the 2000 acre-feet, the steelhead population in the Santa Ynez River has continued to decline. This action has not succeeded in bringing the fish back from the brink of extinction.

Similarly, the alternatives and proposed project should be evaluated with regard to their consistency with the State's "Steelhead Restoration and Management Plan." Modification of the existing reservoir bank, through surcharging the reservoir, will require streambed alteration agreements, and the DEIR should disclose this fact. Additionally, any alteration of streams may have adverse impacts that need to be evaluated in the Draft EIR, and would require streambed alteration agreements.

The proposed project and each alternative should also be evaluated in light of their consistency with the Santa Barbara County General Plan, which contains policies that discuss the protection of endangered species, habitats, native trees, water resources and aesthetics. A comprehensive discussion of the project's consistency with adopted plans and policies, including General Plan policies, is required to determine the level of Land Use Planning

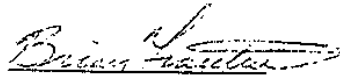
Mr. Jim McNamara and Mr. Jim Canaday
June 17, 1999
Page 7

Impacts. Such impacts must be evaluated in the Initial Study and Draft EIR pursuant to the CEQA Guidelines Appendix G, the environmental checklist.

As a final matter, because the permits at issue are held by the Bureau of Reclamation, it would appear that a NEPA EIS is also required. It is not clear from the NOP whether an EIR/EIS is contemplated or whether separate CEQA and NEPA processes are being pursued.

Thank you for considering our comments, and for modifying the timing of the preparation of, and the scope of the pending Draft EIR, and its alternatives analysis, impacts and mitigation measures.

Sincerely,



Brian Trautwein
Environmental Analyst

cc: Department of Fish and Game
National Marine Fisheries Service
US Fish and Wildlife Service